

2003 AUGUST 19 4:11 PM



0000111713

ORIGINAL

RECEIVED

BEFORE THE ARIZONA CORPORATION COMMISSION

MARC SPITZER
CHAIRMAN
WILLIAM A. MUNDELL
COMMISSIONER
JIM IRVIN
COMMISSIONER
JEFF HATCH-MILLER
COMMISSIONER
MIKE GLEASON
COMMISSIONER

2003 AUG 19 P 4:11

Arizona Corporation Commission
DOCKETED DOCUMENT CONTROL

AUG 19 2003

DOCKETED BY *CR*

IN THE MATTER OF U S WEST
COMMUNICATIONS, INC.'S
COMPLIANCE WITH SECTION 271 OF
THE COMMUNICATIONS ACT OF 1996

DOCKET NO. T-00000A-97-0238

NOTICE OF FILING

The Arizona Corporation Commission Staff ("Staff") hereby files its Supplemental Final Report on Track A and whether Qwest's Section 271 application is in the Public Interest.

RESPECTFULLY SUBMITTED this 19th day of August, 2003.

Maureen Scott

Maureen A. Scott
Attorney, Legal Division
Arizona Corporation Commission
1200 West Washington Street
Phoenix, Arizona 85007
Telephone: (602) 542-6002
Facsimile: (602) 542-4870
e-mail: maureenscott@cc.state.az.us

The original and thirteen (13) copies of the foregoing were filed this 19th day of August, 2003 with:

Docket Control
Arizona Corporation Commission
1200 West Washington Street
Phoenix, Arizona 85007

1 Copies of the foregoing were mailed and/or
2 hand-delivered this ~~19th~~ day of August, 2003 to:

3 Charles Steese
4 Andrew Crain
5 QWEST Communications, Inc.
6 1801 California Street, #5100
7 Denver, Colorado 80202

8 Maureen Arnold
9 Director, Regulatory Matters
10 QWEST Communications, Inc.
11 3033 N. Third Street, Room 1010
12 Phoenix, Arizona 85012

13 Michael M. Grant
14 Gallagher and Kennedy
15 2575 E. Camelback Road
16 Phoenix, Arizona 85016-9225

17 Timothy Berg
18 Fennemore Craig
19 3003 N. Central Ave., Suite 2600
20 Phoenix, Arizona 85016

21 Curt Huttshell
22 State Government Affairs
23 Electric Lightwave, Inc.
24 4 Triad Center, Suite 200
25 Salt Lake City, UT 84180

26 Brian Thomas, VP Reg. - West
27 Time Warner Telecom, Inc.
28 223 Taylor Avenue North
Seattle, Washington 98109

Richard P. Kolb, VP-Reg. Affairs
OnePoint Communications
Two Conway Park
150 Field Drive, Suite 300
Lake Forest, Illinois 60045

Eric S. Heath
Sprint Communications Co.
100 Spear Street, Suite 930
San Francisco, CA 94105

Thomas H. Campbell
Lewis & Roca
40 N. Central Avenue
Phoenix, Arizona 85004

Andrew O. Isar
TRI
4312 92nd Avenue, N.W.
Gig Harbor, Washington 98335

Michael W. Patten
Roshka Heyman & DeWulf
One Arizona Center
400 East Van Buren, Suite 800
Phoenix, Arizona 85004

Charles Kallenbach
American Communications Services,
Inc.
131 National Business Parkway
Annapolis Junction, Maryland 20701

Thomas F. Dixon
MCI Telecommunications Corp.
707 17th Street, #3900
Denver, Colorado 80202

Kevin Chapman
Director-Regulatory Relations
SBC Telecom, Inc.
300 Convent Street, Rm. 13-Q-40
San Antonio, TX 78205

Richard S. Wolters
AT&T & TCG
1875 Lawrence Street, Room 1575
Denver, Colorado 80202
Confidential version

Joyce Hundley
United States Department of Justice
Antitrust Division
1401 H Street NW, Suite 8000
Washington, DC 20530

Joan Burke
Osborn Maledon
2929 N. Central Avenue, 21st Floor
P.O. Box 36379
Phoenix, Arizona 85067-6379
Confidential version

Scott S. Wakefield, Chief Counsel
Daniel W. Pozefsky, Esq.
RUCO
1110 West Washington, Suite 220
Phoenix, Arizona 85007

1 Rod Aguilar
AT&T
2 795 Folsom St., #2104
San Francisco, CA 94107-1243
3
4 Daniel Waggoner
Davis Wright Tremaine
2600 Century Square
5 1501 Fourth Avenue
Seattle, WA 98101-1688
6 Confidential version
7
8 Raymond S. Heyman
Roshka Heyman & DeWulf
One Arizona Center
400 East Van Buren, Suite 800
9 Phoenix, Arizona 85004
10
11 Diane Bacon, Legislative Director
Communications Workers of America
5818 North 7th Street, Suite 206
Phoenix, Arizona 85014-5811
12
13 Diane L. Peters
Director-Regulatory Services
Global Crossing Telemanagement, Inc.
14 1080 Pittsford Victor Road
Pittsford, NY 14534
15
16 Karen L. Clauson
Eschelon Telecom, Inc.
730 Second Avenue South, Suite 1200
17 Minneapolis, MN 55402
18
19 Dennis D. Ahlers, Sr. Attorney
Eschelon Telecom, Inc.
730 Second Ave. South, Ste 1200
20 Minneapolis, MN 55402
21
22 Mark P. Trinchero
Davis, Wright Tremaine
1300 SW Fifth Avenue, Suite 2300
Portland, OR 97201
23
24 Kimberly M. Kirby
Davis Dixon Kirby LLP
19200 Von Karman Avenue, Suite 600
Irvine, CA 92612
25
26 Jacqueline Manogian
Mountain Telecommunications
1430 W. Broadway Road, Suite A200
27 Tempe, AZ 85282
28

Mark DiNunzio
Cox Arizona Telecom, L.L.C.
20401 North 29 Avenue, Suite 100
Phoenix, AZ 85027

Mark N. Rogers
Excell Agent Services, L.L.C.
PO Box 52092
Phoenix, AZ 85072-2092

Steven J. Duffy
Ridge & Isaacson P.C.
3101 N. Central Ave., Suite 1090
Phoenix, AZ 85012-2638

Jon Poston, Consumer Coordinator
ACTS
6733 East Dale Lane
Cave Creek, AZ 85331

Barbara P. Shever
LEC Relations Mgr.-Industry Policy
Z-Tel Communications, Inc.
601 S. Harbour Island Blvd., Suite 220
Tampa, FL 33602

Jonathan E. Canis
Michael B. Hazzard
Kelly Drye & Warren L.L.P.
1200 19th Street, NW, Fifth Floor
Washington, D.C. 20036

Ms. Andrea P. Harris
Sr. Manager, Reg.
Allegiance Telecom, Inc.
2101 Webster, Suite 1580
Oakland, California 94612

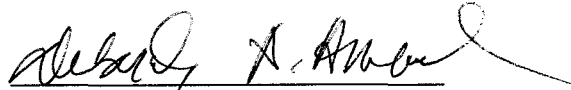
Gary Appel, Esq.
TESS Communications, Inc.
1917 Market Street
Denver, CO 80202

Todd C. Wiley Esq. for
COVAD Communications Co.
Gallagher and Kennedy
2575 East Camelback Road
Phoenix, Arizona 85016-9225

Harry L. Pliskin, Sr. Counsel
Covad Communications Co.
7901 Lowry Blvd.
Denver, CO 80230

1 Andrew D. Crain
2 Qwest Corporation
3 1801 California Street
4 Suite 4900
5 Denver, CO 80202

6
7
8 Lyndon Godfrey
9 AT&T
10 675 East 500 South
11 Salt Lake City, UT 84102
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28



Deborah A. Amaral
Assistant to Maureen A. Scott

**IN THE MATTER OF QWEST CORPORATION'S
SECTION 271 APPLICATION**

ACC Docket No. T-00000A-97-0238

**STAFF'S SUPPLEMENTAL REPORT
ON QWEST'S COMPLIANCE**

With

PUBLIC INTEREST AND TRACK A

AUGUST 19, 2003

SUPPLEMENTAL REPORT

PUBLIC INTEREST AND TRACK A

A. INTRODUCTION

1. On May 2, 2002 Staff Docketed a Proposed Final Report on Public Interest and Track A, and recommended that parties desiring to file comments on this report do so by May 16, 2002.

2. AT&T, Cox, RUCO, Time Warner, Touch America and Qwest filed comments on or about, the above date.

3. This Supplemental Report provides, for the record, a summary of CLEC and Qwest comments concerning Staff's May 2, 2002 report on Public Interest and Track A. It also addresses issues cited in paragraph 382 of Staff's May 2, 2002 report, which are listed below:

- "The Attorney General filed comments recommending against a finding that §271 relief for Qwest would be in the Public Interest. As stated earlier, the first complaint (regarding slamming) has been resolved (in an April 2000 consent judgment); the second complaint (regarding cramming and deceptive advertising) is still pending; and must be considered as only allegations.
- AT&T filed a motion for an order requiring Qwest to supplement the record by filing with the Commission all interconnection agreements adopted by negotiation or arbitration, which had not previously been filed with the ACC. AT&T stated that failure to file is a violation of the Federal Act. AT&T's action was based on a complaint filed by the Minnesota Department of Commerce with the Minnesota Public Utilities Commission against Qwest. As Staff mentioned earlier, this complaint has not yet been heard by the Commission, so should be considered allegations only at this time. In the meantime, Staff has requested that the issue be considered in a separate proceeding.
- The attorney for Touch America provided Staff with copies of two complaints filed with the FCC against Qwest, concerning Qwest's alleged failure to adhere to terms of agreements between Qwest and Touch America. As stated earlier, Staff believes that these allegations, which have not been heard by the FCC, are important enough to warrant Commission attention. However, Staff repeats that they are allegations only and a decision by the FCC has yet to be rendered."

4. As stated in paragraph 383 of the May 2, 2002 report, "None of the concerns raised in the preceding paragraph are absolute; but they should be

factored into the Commission's consideration of Qwest's basic business practices and whether §271 relief would be in the Public Interest."

5. Further, this supplemental report addresses issues cited in paragraph 388 of the May 2, 2002 report, by reason of which Staff recommended that Commission conditionally approve Section 271 relief for Qwest, as it relates to the Public Interest. These condition's were:

- "A final Commission order approving Qwest's PAP.
- Qwest's agreement to make any modifications to the PAP as are deemed necessary and appropriate by the Commission, after a proceeding where all parties have the opportunity to be heard.
- Qwest's agreement to extend the PAP beyond its initial three year term, should the Commission so order.
- Qwest's agreement to withdraw its "WinBack Tariff" until a actual competition reaches a level deemed appropriate by the Commission or to modify the Tariff as set forth herein.
- Qwest's revision of the SGAT, making language changes specified in Checklist Item reports and other reports, approval of which was conditioned on the changes.
- Final Commission Orders finding that Qwest complies with all remaining Checklist Items and Section 271/272 requirements."

6. Finally, this report discusses those events and information which have occurred or become known since May 2, 2002, and their effect on Staff's May 2, 2002 recommendation that the Commission grant Qwest Section 271 approval.

B. CLEC'S COMMENTS ON STAFF'S MAY 14, 2002 REPORT

7. AT&T filed comments on Staff's report on May 14, 2002. Cox, RUCO and Qwest filed comments on this report on May 16, Time Warner filed its comments on May 17 and Touch America, a telecommunications company which had not previously been a participant in this proceeding filed comments on May 15. Qwest responded to Touch America's comments on May 28.

8. The balance of this section and the next focus on CLEC and Qwest comments relative to Staff's May 2, 2002 proposed report.

9. AT&T commented on both the Public Interest and Track A aspects of Staff's proposed report. AT&T's comments were organized in six areas. First, AT&T claimed that Staff's conclusion that Qwest had satisfied its Track A compliance obligations was incorrect, since AT&T stated that only a *de minimus* number of residential customers are served by new entrants. Although AT&T referenced the

business customers, it focused its comments on residential customers and residential access lines. It stated that the results of the Staff survey showed that only 3% of Arizona's residential access lines are served by CLECs. It claimed that by any measure, only a *de minimus* number of residential customers is currently being served by CLECs in the state of Arizona.

10. AT&T next stated that the Staff report failed to address either the price squeeze issue, or the inadequate margins available through the purchase and sale of UNE-P. AT&T stated that it believes that at a minimum, until such time as AT&T's price squeeze arguments have been addressed, the Section 271 application should not be approved.

11. AT&T next stated that the Staff report improperly ignored on-going bad acts and anticompetitive behavior on the part of Qwest. AT&T provided several general comments, but focused on the Minnesota AT&T UNE testing complaint, and the Washington NID padlocking episodes. It also cited the proceedings relating to Secret Agreements in five states, the SEC investigation into Qwest's accounting practices and the Attorney General's suit against Qwest in Arizona.

12. Building on the Secret Agreement complaint in the last paragraph, AT&T referenced the independent Arizona Staff investigation to analyze agreements Qwest has not filed with the Commission for approval under Section 252(e) of the Act.

13. AT&T also took issue with Staff's conclusion that the working relationship between Qwest and the CLECs is improving.

14. And finally, AT&T claimed that Staff did not adequately address AT&T's access issue. This issue is one of high intrastate access charges and the effect of failing to reflect Qwest's switch from access charges to forward-looking costs before Qwest obtains 271 relief.

15. Cox focused its May 16 comments on the WinBack Tariff. It stated that in general, Cox supports Staff's concerns about Qwest's WinBack Tariff. However, Cox believes Staff's proposal to remedy the anti-competitive effect of the WinBack Tariff is both confusing and unnecessarily complicated.

16. Cox stated that the proposed modification set forth in the report is not clear. It questions whether Qwest is supposed to delay its WinBack efforts for a particular customer until after the customer has used the CLEC service for six months, or is Qwest simply to delay offering a WinBack incentive under the Tariff until six months after Qwest receives its 271 approval. Cox submits that the most simple and most effective solution is to require Qwest to withdraw its current WinBack Tariff. Qwest could submit a new WinBack Tariff when it is appropriate to do so, and the Commission would be able to treat the Tariff filing as it would any new Tariff filing.

17. Cox also submitted that Qwest should be required to withdraw its Local Service Freeze Tariff as a condition of compliance with the Public Interest element, and states that this condition would be consistent with Staff's recently-filed testimony in the

LSF Tariff Docket (Docket No. T-01051B-02-0073).

18. RUCO's comments on Staff's proposed report, as with Cox, requested clarification regarding Qwest's WinBack Tariff. It claimed that Staff recommended the WinBack Tariff be withdrawn until "actual competition reaches a level deemed appropriate by the Commission, or to modify the Tariff as set forth herein". RUCO stated that it is unclear from these paragraphs precisely what Staff was recommending concerning Qwest's WinBack Tariff. RUCO also commented that Staff's final recommendation was not predicated on the results of the 252 Docket recently opened and pending before this Commission (Docket No. RT-00000F-02-0271). RUCO stated that its final recommendation regarding Public Interest will be conditioned on a finding by the Commission that Qwest did not engage in anti-competitive behavior in the 252 Docket.

19. Time Warner Telecom stated that for purposes of this filing Time Warner joined in and concurred with the comments filed by Cox Arizona Telecom on May 16, 2002.

20. Touch America Inc., which had not been a party to this proceeding prior to May 15, 2002 filed comments on that date on Staff's May 1, 2002 proposed report on Qwest's compliance with Public Interest and Track A. It noted that the Commission report described two complaints filed by Touch America at the Federal Communications Commission (FCC) against Qwest, alleging that Qwest had violated Section 271 of the Telecom Act by continuing to offer in-region long distance services under the name of "capacity IRUs" after merging with U S West.

21. Touch America commented that on May 2, 2002 AT&T filed a brief with the FCC commenting upon a March 22, 2002 audit report by Arthur Anderson regarding Qwest's compliance with FCC conditions. Touch America stated that AT&T's brief substantially supported Touch America's claims in its two FCC complaints. Touch America stated that Qwest's purported compliance in this document is essentially a set of promises by Qwest that it will open the local exchange market to competition and treat competitors in a fair and even handed manner. It raised the question as to whether or not Qwest can be trusted to keep those promises, and stated that Touch America believes the answer is no. It based this observation on its experience in the purchase of Qwest's long distance assets, and stated that Qwest never fully divested itself of its in-region long distance customer base as it had promised to Touch America and the FCC.

22. Touch America stated that it was also then engaged in an arbitration and litigation with Qwest in Federal District Court in Colorado regarding Qwest's billing practices and other forms of anti-competitive behavior. It claimed that Qwest has over billed Touch America for services purchased from Qwest since July 2000 when Touch America purchased Qwest's long distance assets. It further cited a series of three investigations in which Touch America had no involvement. Finally, Touch America requested that the Commission wait until September 2002 to judge Qwest's 271 application. Touch America expected the FCC to rule on its capacity IRU complaint at that time, and stated that if Touch America prevailed it would confirm that Qwest is not 271 compliant.

C. QWEST'S COMMENTS ON THE MAY 2, 2002 STAFF REPORT

23. On May 16, 2002, Qwest filed comments on the Staff's proposed report on its compliance with Track A and the Public Interest. Qwest stated that the Staff report concluded that the Commission should find that Qwest has satisfied the Public Interest requirements of Section 271, subject to certain conditions outlined by Staff. Qwest further stated that although it agreed with virtually all of Staff's recommendations, it took exception to Staff's suggestions that Qwest's "competitive response program" (WinBack) was somehow improper, given competitors relative market shares, and that Qwest's Section 271 application could not be in the Public Interest unless Qwest suspended its WinBack program for six months after its application is granted. Qwest stated that the FCC, in its order approving BellSouth's Section 271 applications for Georgia and Louisiana, made clear that WinBack programs were appropriate under the FCC's rules, and did not present a concern under Section 271's Public Interest Standard. Qwest therefore sought modification of the Staff report.

24. Qwest noted that the Arizona Corporation Commission had already considered Qwest's WinBack Tariff's multiple times in separate tariff proceedings, and had failed to find those tariffs to be anti-competitive and always approved them. It cited the 1999 AT&T objection to Qwest's WinBack program, and the Commission approval of the tariff in spite of AT&T's argument. It stated that since the Commission had already considered these concerns there is no reason to re-litigate them now as a part of the Public Interest inquiry.

25. Qwest stated that far from being "anti-competitive" the WinBack program was nothing more than recognition that competition exists in Qwest's marketplace. It further stated that the FCC echoes this conclusion in the BellSouth Louisiana and Georgia Section 271 approval order. Thus, Qwest requested that Staff reconsider and remove its proposal that Qwest should be required to suspend its WinBack program for six months after its receipt of Section 271 authorization as a condition of the Commission's recommendation that Qwest's application is consistent with the Public Interest.

26. On May 28, 2002 Qwest responded to Touch America's comments. Qwest stated that Touch America demonstrated no basis for submitting these belated comments. While it previously provided Staff with copies of the FCC complaints that are the focus of its comments, Touch America had never entered any appearance in this longstanding docket, nor filed any prior explanation of why these FCC complaints were relevant to it.

27. Qwest stated that Touch America's comments added nothing to the complaints it had already filed before the FCC and provided no basis for Staff to alter its conclusions. Further, Qwest stated that Touch America's complaints before the FCC did not involve local competition issues at all. Rather, they alleged that Qwest's in-region dark fiber and loop fiber capacity IRU transactions amounted to the provision of in-region interLATA services in violation of Section 271, and violated the terms of the FCC's U S West/Qwest merger order regarding divestiture of such service.

28. Qwest further stated that the FCC had made it clear that disputes arising from BOC merger orders that are currently being considered in its complaint dockets are best resolved in those other pending dockets, not imported into the consideration of Section 271 applications. Qwest stated that the FCC also expressly rejected the idea that the Section 271 process should "resolve all complaints, regardless of whether they relate to local competition, as a precondition to granting a Section 271 application." Qwest believed that Touch America's complaints have demonstrated no relationship to such local competition issues and should not be considered in this wholly separate §271 application proceeding. Qwest stated that the FCC is reviewing matters related to the Qwest Touch America transactions to determine whether Qwest's interpretation of the FCC's own orders and the provisions of Federal Law are reasonable. Finally, Qwest stated that Staff appropriately concluded that such questions are most appropriately resolved by the FCC and Touch America has advanced no reasons why that conclusion was incorrect.

D. TRACK A

29. In its comments on Staff's May 2, 2002 Public Interest and Track A report, AT&T claimed that Qwest had not met Track A obligations, stating that only a de minimus number of residential customers were served by new entrants.¹

30. As stated in paragraph 386 of Staff's May 2, 2002 report, "... data provided by Staff (based on Data Requests issued by Staff to Qwest and CLECs) unequivocally demonstrate that the Arizona local service market is open to competition. The report showed that in July 2001, CLECs served 15% of total business access lines, 3% of total residential access lines, and 7% of all access lines in Qwest's Arizona service territory. Staff found these results to be comparable to those of other jurisdictions, in which the FCC had granted §271 relief to other applicants.

31. In support of Staff's finding above, Staff cites the FCC report on Local Telephone Competition dated June 12, 2003. Table Seven of that report shows that, nationwide, CLEC's share of total switched access lines in June 2001 was 7%, with 17 states (of the 37 that reported data) equal to, or less than the 7% reported for Arizona. As shown on Tables 6 and 7 of the FCC's June 2003 report, by December 31, 2002, the CLEC share of switched access lines in Arizona had risen to 12%. Finally, data listed in Tables 1 and 2 of the FCC's June 2002 report, when used in combination, show that in June 2001, the national average of residential and small business access lines served by CLECs was 3.4% of the total; a number very comparable to that in Arizona (for

¹ Track A, as defined in Section 271 of the Telecom Act of 1996, is the appropriate test when facilities based competitors have entered the local service market in a state, and the Bell Operating Company (BOC) has entered into one or more binding agreements that have been approved under Section 252. Terms and Conditions must specify how the BOC is providing access and interconnection to its network facilities for the comparable facilities of one or more non-affiliated competing providers of telephone exchange services to business and residential subscribers.

residential only) at that time.²

E. PARAGRAPH 382 ISSUES (MAY 2, 2002 REPORT)

32. Issue No. 1 in paragraph 382 was that of two complaints filed by the Arizona Attorney General. The first complaint filed against Qwest Corporation and Qwest Wireless LLC had already been resolved (by May 2, 2002). On July 7, 2003 the Arizona Attorney General announced settlement of the Consumer Fraud Lawsuit (the second of two complaints cited in the May 2, 2002 Staff report). Therefore, the Attorney General complaints have been resolved, and should no longer affect consideration of Qwest's §271 application.

33. Issue No. 2 in paragraph 382 was that of previously unfilled interconnection agreements (ICAs). Staff requested that the issue be considered in a separate proceeding. In fact, issues arising from the unfilled agreements were subsequently addressed in two proceedings, 1) the 252(e) proceeding (to determine which ICAs should have been filed, and the potential penalty that should be assessed for those which should have been, but were not filed), and 2) the §271 sub-docket proceeding (to determine interference with the Arizona regulatory process, and potential penalties therefore). These issues will be discussed in a separate section of this report, headed: "Global Settlement".

34. The third issue in paragraph 382 addressed complaints by Touch America filed with the FCC against Qwest, concerning Qwest's alleged failure to adhere to terms of agreements between Qwest and Touch America. Staff stated, in the May 2, 2002 report that the allegations, were only that (allegations), but warranted Commission attention. However, on June 25, 2003 Qwest and Touch America announced agreement on a settlement that canceled all claims between them. Therefore, Touch America no longer has any claims against Qwest; with the aforementioned settlement, this ceased to be an issue.

F. PARAGRAPH 388 ISSUES (MAY 2, 2002 REPORT)

35. In paragraph 388 of the May 2, 2002 report, Staff recommended that the Commission conditionally approve Qwest's §271 application as it relates to Public Interest.

36. The first condition cited was a final Commission Order approving a Performance Assurance Plan (PAP). Arizona Corporation Commission Decision 64888, dated June 5, 2002 provided the necessary approval; this matter is thereby resolved.

37. Paragraph 388 issues two and three (the Commissions ability to make changes to the PAP and to extend the PAP as deemed appropriate by the Commission)

² This number is relevant since one or more CLECs claimed that the number of residential access lines served by CLECs in Qwest's Arizona service area was "de minimus"; yet it was comparable to other states in which the FCC had granted Qwest §271 approval.

are automatically subsumed within the condition cited in paragraph 37 above. Without these conditions being met the Commission would not have approved Qwest's PAP for Arizona.

38. Several parties to the §271 proceeding requested clarification of Staff's recommendation concerning Qwest's WinBack Tariff (paragraph 388, issue four), which clarification was provided by Staff in the May 2, 2002 report. As stated in paragraph 388 of the May 2, 2002 Staff report, Commission approval of Qwest's §271 application should be conditioned on (among other things): "Qwest's agreement to withdraw its "Winback Tariff" until actual competition reaches a level deemed appropriate by the Commission, or to modify the Tariff as set forth herein."

39. At this time Staff recommends that in place of its earlier recommendation, Qwest refile its Winback Tariff, specifying that it (Qwest) will not attempt to utilize the "Winback" Tariff to win back a lost customer until a minimum of 90 days from the date such customer left Qwest for another service provider.

40. Paragraph 388, issue five, specified that Qwest provide a revised version of the SGAT, making language changes specified in (earlier) Checklist Item reports, approval of which was conditioned on the changes.³ Qwest should provide verification that all SGAT changes approved in the Arizona workshops, or otherwise agreed to be imported back to Arizona, have been made in its latest SGAT.

41. Issue Six of Paragraph 388 specifies a requirement for final Commission Orders finding that Qwest complies with all remaining Checklist Items and Section 271/272 requirements. As shown in the following table, Commission decisions have been issued for all 14 Checklist Items, and for Line Splitting/NIDs, Emerging Services and the Arizona PAP. Staff reports have been docketed, but no decisions have been issued by the Commission for: Statement of General Terms and Conditions (SGAT) including Special Request Process (SRP) and Bona Fide Request (BFR); Section 272, The OSS Test, the two reports concerning the July 30-31, 2002 Workshop and the subject of this report, Public Interest and Track A.

TABLE A
Commission Approved

<u>Checklist Item</u>	<u>Subject</u>	<u>Decision No.</u>	<u>Decision Date</u>
1	Interconnection/Collocation	64600	03/04/01
2	UNEs	64630	03/15/02
3	Access to Poles, Ducts, Conduit and ROWs	63419	03/09/01

³ Four revisions to the Arizona SGAT have been filed since December 28, 2001. Revisions 10-13 incorporated changes to a broad number of SGAT items, including but not limited to, Emerging Services, Line Splitting and NIDs, Checklist Items 1, 2, 3, 4, 7, 10, 11, General Terms and Conditions, BFR and Forecasting.

		64300	12/20/01
4	Loops	64836	05/21/02
5	Unbundled Transport	64216	11/20/01
6	Unbundled Switching	64214	11/20/01
7	911/E911, Directory Assistance and Operator Services	63385	02/16/01
		64301	12/20/01
7	(Different Number (Call Completion Services)	64835	05/21/02
8	White Pages Directory Listings	62344	03/06/00
9	Numbering Administration	62344	03/06/00
10	Database and Associated Signaling	63384	02/16/01
10	Supplemental Report – CNAM Issue	64837	05/21/02
11	LNP	64629	03/15/02
12	Dialing Parity	62344	03/06/00
13	Reciprocal Compensation	63977	08/30/01
14	Resale	64060	09/11/01
NA	Line Splitting/NIDs	64880	06/05/02
NA	Emerging Services	64215	11/20/01
NA	PAP	64888	06/05/02

Not Yet Approved or Addressed By The Commission

<u>Checklist Item</u>	<u>Subject</u>	<u>Staff Report Date</u>
NA	General Terms & Conditions, including SRP, BFR	December 28, 2001
NA	§272	April 19, 2002
NA	OSS Test	May 3, 2002
NA	Public Interest and Track A	May 2, 2002
NA	July 30 – 31, 2002 Workshop – Final Supplemental Report No. 1 (OSS Issues)	February 25, 2003
NA	July 30 – 31, 2002 Workshop – Final Supplemental Report No. 2 (Checklist Issues)	June 27, 2003

42. Staff believes that the remaining steps regarding General Terms and Conditions, §272, the OSS Test, Public Interest/Track A and the July 30-31, 2002 Workshop are to present Staff's reports to the Commission in an open meeting (or meetings), and allow parties to comment thereon; following which the Commission would issue the relevant decisions.

G. SUBSEQUENT ISSUES

43. On November 1, 2002, the ACC issued Order No. 65349, which denied Qwest Corporation's request to approve its Local Service Freeze tariff. The Order stated that the FCC recognized that such freezes can be an effective consumer tool against slamming, but that individual states have the power to order moratoria on the implementation or solicitation of local service freezes. The Administrative Law Judge

found no evidence in the record of slamming in the local market in Arizona. She also found that the best way to implement this consumer protection tool is through rulemaking, and directed Staff to open a rulemaking docket for this purpose.

44. On April 18, 2002 the Hearing Division established a procedural schedule for reviewing unfiled agreements in a new Section 252(e) docket (Docket No. RT-00000F-02-0271). This docket was established to determine which interconnection agreements should have been filed and what penalties should be assessed for not filing them. Issues relating to Qwest's compliance with Section 252(e) of the Federal Act were set for a hearing by Procedural Order dated November 7, 2002. Initial testimony was filed by Qwest on December 2, 2002. RUCO filed testimony on January 21, 2003; and Staff filed its testimony on February 21, 2003. Qwest filed rebuttal testimony on March 7, 2003. The Hearing was held on March 17-20, 2003. The parties filed post-hearing briefs on May 1, 2003; and reply briefs on May 15, 2003.

45. On November 7, 2002 the Hearing Division opened a sub-docket to the Section 271 investigation (Docket No T-00000A-97-238) concerning allegations that Qwest interfered with the Section 271 regulatory process. This sub-docket was established to determine whether Qwest had interfered with the regulatory process, and if so, the penalty for interfering with this process. Staff filed its report and recommendation on May 6, 2003 in the 271 sub-docket. A procedural conference was set by a Procedural Order dated June 19, 2003 to commence on June 30, 2003 for the purpose of discussing the procedural recommendations for further proceedings.

46. On November 13, 2002 Staff petitioned the Commission to issue an order directing Qwest to show cause (1) why its failure to implement the rates required by decision 64922 for six months is not unreasonable and (2) why its implementation of rates in other states with pending §271 applications at the FCC ahead of Arizona is not unreasonable.⁴ This order, No. 65450, was issued on December 12, 2002. Qwest was also ordered to show cause why it should not be held in contempt of a Commission Order, and assessed fines for failure to implement the rates approved in the above decision within a reasonable amount of time. Further, Qwest was ordered to Show Cause why it should not be held in contempt of a Commission Order and assessed fines for deliberately delaying implementation of the wholesale rate changes in Arizona until it had implemented the same changes in at least 10 other states in which it has §271 applications pending at the FCC.

47. On December 20, 2002 the Hearing Division issued a procedural order which stated, among other things, that the November 7, 2002 Procedural Order shall be modified to eliminate the finding that Phase A of the Section 252(e) proceeding conclude prior to the conclusion of the Public Interest Inquiry in the Section 271 investigation. It further ordered that the Commission defer determination of whether a final order in the Section 252(e) docket is required prior to making a final recommendation on the Public Interest portion of the Section 271 Docket, and that no

⁴ The Commission approved the wholesale rates established by Qwest as a part of the phase II Rate Case (Docket No. T-01051 B-02-0073).

determination either way is being made at this time.

H. GLOBAL SETTLEMENT

48. On June 27, 2003 Qwest and Staff filed a joint motion (which was subsequently granted) to extend time for a procedural conference. They stated that the reason for this request was that they were in the process of negotiating a settlement agreement that involved the 271 sub-docket. This negotiation also included the 252(e) docket and the Show Cause Order Docket.⁵

49. These negotiations were conducted initially by Qwest and Commission Staff. Later, the principles of settlement were discussed with the parties in a conference (call) on July 10, 2003, and a draft of a proposed settlement agreement was distributed on July 14, 2003. On July 15, 2003 all active parties to the enforcement dockets had an opportunity to present comments, based on their review of the draft. RUCO, AT&T, MCI, Time Warner and Mountain Telecommunications participated in the discussions. However, the Settlement Agreement dated July 25, 2003 was signed only by the principals involved; Qwest and ACC Staff.

50. This Settlement Agreement provides for a combination of six types of monetary penalties, which, in aggregate, amount to just over \$20 million. It also includes a series of non-monetary penalties as described therein. The Agreement also contains provisions to ensure Qwest's ongoing compliance with Section 252(e) of the Federal Act, provisions to ensure that Qwest does not interfere with the integrity of the Commission's regulatory processes in the future, and provisions to ensure that Qwest implements future wholesale rate orders of the Commission on a timely basis.

I. STAFF DISCUSSION/VERIFICATION OF COMPLIANCE

51. As supplemented herein, Staff believes that Qwest now unconditionally meets the requirements of Public Interest and Track A. In preceding paragraphs of this report, Staff has shown that all conditions related to its recommendation in the May 2, 2002 report, have now been met by Qwest.

52. Several issues cited by one or another of the parties, such as the issue of UNE prices have been resolved by the issuance of the June 12, 2002 rate order.⁶ Other issues, such as those relating to the PAP have been resolved by the approval by the Commission of Qwest's proposed PAP, as modified by the Commission.

53. The "Global Settlement" reached between Staff and Qwest addresses all major outstanding enforcement issues and provides assurances that Qwest will not

⁵ In May and June, 2002 the unfiled agreements issue arose, followed by the delay in implementing the June 12, 2002 rate case decision. These issues created sufficient delays on the §271 proceeding, that the parties, in an effort to resolve them all, entered into all inclusive settlement negotiations.

⁶ The intrastate access charge issue was not resolved by the June 12, 2002 rate order; it is being handled in a separate docket, No. T-00000D-00-0672.

engage in the conduct that was the subject of the Litigation in the future. Therefore, in Staff's opinion, Qwest has now met the Public Interest and Track A Requirements. It therefore recommends that the Commission approve Qwest's Section 271 application.⁷

CONCLUSIONS OF LAW

1. 47 U.S.C. Section 271 contains the general terms and conditions for BOC entry into the interLATA market.

2. Qwest is a public service corporation within the meaning of Article XV of the Arizona Constitution and A.R.S. Sections 40-282 and the Arizona Commission has jurisdiction over Qwest.

3. Qwest is a Bell Operating Company as defined in 47 U.S.C. Section 153 and currently may only provide interLATA service originating in any of its in-region States (as defined in subsection (I)) if the FCC approves the application under 47 U.S.C. Section 271(d)(3).

4. The Arizona Commission is a "State Commission" as that term is defined in 47 U.S.C. Section 153(41).

5. Pursuant to 47 U.S.C. Section 271(d)(2)(B), before making any determination under this subsection, the FCC is required to consult with the State Commission of any State that is the subject of the application in order to verify the compliance of the Bell operating company with the requirements of Section 271.

6. In order to obtain Section 271 authorization, Qwest must, inter alia, meet the requirements of Section 271(c)(2)(B), the Competitive Checklist, and there must be a finding that Qwest's provision of interLATA service is in the public interest.

7. FCC Orders granting 271 relief set forth the following criteria for a determination that a BOC's provision of interLATA service is in the public interest:

- Determination that the local markets are open to competition
- Identification of any unusual circumstances in the local exchange and long distance markets that would make the BOC's entry into the long distance market contrary to the Public Interest

⁷ The issue of unfiled agreements was also raised in Minnesota in its §271 application. The FCC, in its June 26, 2003 Order WC (Docket No. 03-90) granted the application, concluding that it was consistent with the Public Interest. With respect to unfiled agreements, the FCC stated that: "We concur with the Department of Justice (DOJ) that Qwest's previous failure to file certain interconnection agreements with the Minnesota Commission does not warrant a denial of the application. We conclude, as in the *Qwest 9-State Order* and *Qwest 3-State Order*, that concerns about any potential ongoing checklist violation (or discrimination) are met by Qwest's submission of agreements to the Minnesota Commission pursuant to Section 252 and the Minnesota Commission acting on Qwest's submission of those agreements".

- Assurance of future compliance by the BOC

8. As a result of the proceedings and record herein, Staff believes that the requirements set forth in Paragraph 7 above have been met and recommends that the Commission approve Section 271 relief for Qwest, as it relates to the Public Interest.